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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,644	11/13/2003	Victor A. Bennett	CP-1	8976
26379	7590	05/15/2006	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US, LLP 2000 UNIVERSITY AVENUE E. PALO ALTO, CA 94303-2248			MAHMOUDI, HASSAN	
			ART UNIT	PAPER NUMBER
			2165	

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/712,644	Applicant(s) BENNETT ET AL.	
	Examiner Tony Mahmoudi	Art Unit 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. In response to communications filed on 02-March-2006, claims 1-4 and 8-9 are amended per applicant's request. Claims 1-9 are presently pending in the application, of which claim 1 is presented in independent form.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-9 of the instant application are provisionally rejected under the judicially created doctrine of double patenting over claims 1-18 of copending Application No. 10/686,225 (Bennett et al., U.S. Publication No. 2005/0086245 A1.)

Claims 1-18 of Patent Application No. 10/686,255 (U.S. Publication No. 2005/0086245 A1) contains every element of claims 1-9 of the instant application and as such anticipates claims 1-9 of the instant application.

“A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carino, Jr. (U.S. Patent No. 6,067,542) in view of Ulrich et al (U.S. Publication No. 2002/0178162 A1.)

As to claim 1, Carino, Jr. teaches a hardware database (see Abstract, and see column 2, lines 15-31) for implementing known database protocols (see column 4, line 61 through column 5, line 5, and see column 7, line 65 through column 8, line 5, where “known database protocols” is read on “SQL queries”) comprising:

a database stored in a memory (see figure 1, and see column 3, lines 50-62);

a microprocessor (see figure 1, reference 102) operable to receive statements from a user, the statements in a known database protocol format (see column 3, lines 42-49, and see column 12, lines 55-60), operable to manipulate data in the database (see column 7, lines 47-56, see column 13, lines 26, and see column 17, lines 27-30); and

a data flow (receiver) in communication with the microprocessor and the database and operable to receive the statements from the microprocessor and to process the statements against the database (see figure 8, see column 11, lines 27-37.)

Carino, Jr. does not explicitly teach a hardware data flow engine processing in hardware.

Ulrich et al teaches an integrated distributed file system (see Abstract), in which he teaches a hardware data flow engine processing in hardware (see paragraphs 575 and 594.)

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Carino, Jr. by the teaching of Ulrich et al, because including a hardware data flow engine processing in hardware, would provide “the capability for autonomous movement of data between the network interfaces and data caches, and between the storage interfaces and the data caches” (see Ulrich et al, paragraph 594.)

As to claim 2, Carino et al as modified, teaches wherein the dataflow engine further comprises:

a parser receiving the statements in a known database protocol format and converting the statements in a known database protocol format into executable instructions and data objects (see Carino et al, column 12, lines 57-67);

an execution tree processor connected to the parser and receiving the executable instructions from the parser, the execution tree processor creating execution trees from the executable instructions and schedules the execution trees for execution (see Carino et al, column 12, line 64, where “execution tree” is read on “parse tree”; and see column 15, lines 10-51); and

a graph engine connected to the execution tree processor, the graph engine operable to manipulate the database as required by the executable instructions (see Carino, Jr., column 7, lines 47-56, see column 13, lines 26, and see column 17, lines 27-30.)

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As to claim 3, Carino, Jr. as modified, teaches wherein the information in the database is represented in memory as a set of trees (see Ulrich et al, figures 10 and 11; and see paragraphs 285-288.)

As to claim 4, Carino, Jr. as modified, teaches wherein the hardware database is connected directly to a network using a network connection, and the microprocessor is operable to receive the statements over the network connection (see Carino, Jr., figures 3 and 8, see column 5, lines 21-33, see column 8, lines 26-52, and see column 9, lines 5-25.)

As to claim 5, Carino, Jr. as modified, teaches wherein the hardware database is connected to application servers, the application servers providing statements to the hardware database (see Carino, Jr., figure 5, and see column 10, lines 6-55.)

As to claim 6, Carino, Jr. as modified, teaches wherein the statements are Structured Query Language statements (see Carino, Jr., column 1, line 61 through column 2, line 5, and see column 4, line 61 through column 4, line 5.)

As to claim 7, Carino, Jr. as modified, teaches wherein the hardware database further includes a host microprocessor connected to the microprocessor (see Carino, Jr., column 8, line 23-52, and see column 9, lines 5-15.)

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As to claim 8, Carino, Jr. as modified, teaches wherein processing of the statements includes one or more reading information from the database, writing information into the database (see Carino, Jr., column 11, lines 54-58) and altering information in the database (see Carino, Jr., column 12, lines 3-21.)

As to claim 9, Carino, Jr. as modified, teaches wherein the data flow engine is operable to call routines from the microprocessor (see Carino, Jr., column 10, line 25, and see column 15, lines 23-28.)

Response to Arguments

6. Applicant's arguments filed on 02-March-2006 with respect to the rejected claims in view of the cited references have been fully considered but they are either moot in view of the new grounds for rejection, or they are not deemed persuasive:

Arguments presented by the applicant regarding the prior art rejection of the claims are considered moot in view of the new grounds for rejection presented above.

Applicant's amendments to the claims overcome the previously made *Provisional Double Patenting* against co-pending application No. 10/741,332 (Bennett et al., U.S. Publication No. 2005/0138006 A1.) This rejection is hereby withdrawn. However, the Examiner maintains the *Provisional Double Patenting* against co-pending application No. 10/686,225 (Bennett et al., U.S. Publication No. 2005/0086245A1.)

Applicant's amendments to the claims overcome the previously made claim objections, and rejections under 35 U.S.C. 112 (second paragraph). The objections and rejections have been withdrawn accordingly.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


8. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Tony Mahmoudi whose telephone number is (571) 272-4078. The examiner can normally be reached on Mondays-Fridays from 08:00 am to 04:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at (571) 272-4146.

tm

March 30, 2006


JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100